IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1417 of 2000

with

CRIMINAL MISC.APPLICATION No 1688 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHURABHAI MUNJABHAI MER

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 1417 of 2000
Mr Y N Oza, Sr.Advocate with MR RS SANJANWALA for Petitioner
Mr S K Patel, APP for Respondent No. 1

2. Criminal Misc.ApplicationNo 1688 of 2000
MR Y N Oza, Sr. Advocate with Mr RS SANJANWALA for Petitioner
Mr S K Patel, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH
Date of decision: 12/10/2000

C A V JUDGMENT

Rule.

These two petitions have been filed by these petitioners under section 482 of the Criminal Procedure Code, 1973 (for short 'the Code') for quashing and setting aside the FIR being C.R. No.35 of 2000 at Annexure 'A' to the petition filed before Ranavav Police Station 11.3.2000 against the petitioners for offences punishable under sections 212 read with section 114 of the Indian Penal Code.

2. The allegations against the petitioners are that an offence was registered before Ranavav police station at C.R. No.132/99 for offences punishable under section 324 of Indian Penal Code etc. against Mer Haja Pola of village Koyana. That, he was absconding. That knowing about the said position, these petitioners jointly arranged for the shelter and safe stay of the said accused Haja Pola. That as a result of this arrangement, the said accused stayed with petitioner Mer Bhurabhai Munjabhai at his residence at Gandhinagar. Therefore, the allegation against the petitioners is that they provided shelter to Haja Pola, an accused in the aforesaid offence, knowing that he was involved in the said offence and that he was "wanted" therein and that he was absconding in the said offences.

3. The petitioners have filed these two petitions for quashing and setting aside the said FIR mainly on the ground that there is no reason or ground for proceeding against the petitioners and except bare word of the aforesaid accused, there is no other material available with the Investigating Agency to prosecute the petitioners and, therefore, the said FIR may be quashed. On receiving the petitions, notices were issued to and served upon the respondents. Mr S K Patel, learned APP has appeared for the respondents. I have heard the Mr Y N Oza, learned Sr.Advocate with Mr R S Sanjanwala for the petitioners. I have also heard the arguments advanced by the learned APP and have perused the papers.

4. It has been mainly argued by Mr Y N Oza that the names of these two petitioners have been brought out only during the course of interrogation of the said accused Mer Haja Pola. That the said statement is not admissible in evidence as it is a statement of co-accused. That

barring the said statement, there is no other material available with the prosecuting agency or Investigating Agency against the petitioners and, therefore, there is no reason to proceed against the petitioners and, therefore, the petition be allowed and the FIR be quashed and set aside. For the aforesaid purpose, some history has been given by the learned Sr.Advocate for the petitioner as to why the petitioners have been involved in the matter. I do not feel it necessary in this matter to discuss that aspect of the case since the FIR is otherwise found to be proper and legal.

5. Learned Sr. Advocate for the petitioners has also argued that the petitioner Bhurabhai was a Member of the Legislative Assembly upto 1997. That therefore, the said petitioner was provided with police protection under the orders of the Speaker of the House at the first instance and thereafter, on account of the order of this High Court. That therefore, the said petitioner was constantly under police protection and the police official used to remain present along with the said petitioner all through out. That therefore, there is no possibility of anybody stating that the petitioners had given shelter to the said person. It is also contended that the police Investigating Agency has recorded the statement of the said police official attending the said petitioner for his protection and even the said police official has not given statement to the effect that the said shelter was given by these two petitioners to the said offender.

6. It seems that the information received by the petitioners in this behalf does not appear to be well-founded or at least it does not appear to be true. It is not possible at this stage to disclose as to what has been stated by the said official before the police, but it would be sufficient to state that the aforesaid information received by the petitioners that the said official has not given any material to the police during the course of his statement showing that these petitioners had given shelter to the said offender is not a coarrect information received by them. Even otherwise, there are other statements available with the Investigating Agency to show that these two petitioners had given shelter to the said offender Haja Pola of village Koyana. In fact, if we peruse the papers, it can be seen that 4 to 5 persons have deposed that the said accused remained at the residence of the said petitioner Bhurabhai at Gandhinagar. Even the background of entry of the said offender at the residence of the petitioner Bhurabhai has also come on record. It has also come out

during the statement of the said witnesses that the brother of the said offender had conveyed in advance to petitioner Bhurabhai and when the said offender contacted the petitioner Bhurabhai, the petitioner confirmed the position and stated to the said offender that the fact about arrival of the offender was conveyed to him by the brother of the said offender in advance. The material facts derived from the said statements further disclose that the said offender had stayed at the residence of the petitioner Bhurabhai for about a month and thereafter he went away. Address of the petitioner Bhurabhai is shown to be "Sector No.1 Block No.366, Gandhinagar". The aforesaid witnesses have, therefore supported the case of the prosecution and have said that the said offender stayed with the petitioner Bhurabhai for about a month at the residence of Bhurabhai which is situated at the aforesaid place. Even involvement of the other petitioner Mer Veja Lala has also been disclosed in the statements of those witnesses. Naturally, the petitioners are not entitled to look into those police papers at this stage as the charge-sheet has yet not been filed. In the aforesaid view of the matter, when the police Investigating agency has some material with it showing involvement of these two petitioners in the aforesaid offence, this petition cannot be allowed and the FIR cannot be quashed.

7. Learned APP has argued that the High Court is not required to examine the materials in detail while considering the matters under Section 482 of the Code. There is no dispute with respect to that and therefore, it is not necessary to go into the decision referred to by him and reported in 1998 (8) SCC 630. At the same time, when there is some material on record to show the involvement of the petitioners in the aforesaid offence, it would not be necessary to consider other decisions on this aspect.

8. The learned Sr.Advocate for the petitioner has also argued that the offences registered against the said offender were bailable and the said offender could have directly approached the police and could have applied for bail. That in that event, the police would have released him on bail. That therefore, it was not necessary for him to go to the petitioners for shelter and it would equally not be necessary for the petitioners to extend shelter to him. Now the reason as to why the said offender had gone to the petitioner and as to why the petitioners had given shelter to him would be a question which is not required to be answered in this petition. The fact remains that there is material on record to show

that the petitioners have provided shelter to the said offender and therefore, it cannot be said that the FIR, if read as it stands, discloses no offence. On the other hand, the FIR read with other police investigation papers do disclose the said offences against the two petitioners prima facie under section 212 and 114 of Indian Penal Code. It, therefore, cannot be said that the FIR and police papers, when read together, do not constitute any offence or that they do not make out any offence. On the contrary, these papers disclose involvement of these petitioners in the offences registered against them.

8. An attempt was made to argue that the statements recorded during the course of investigation by the Investigating Police Officer are not required to be signed by the deponents and therefore, false statements are placed in police papers by the investigating police officer. This becomes a question of fact in each case. It cannot be gone into at this stage in this petition under section 482 of the Code. There is no provision for any inference or presumption that such unsigned statements are false or that they have been placed in police papers without actually recording the same. We have to read these papers as they stand. And on looking into these papers, it has to be held that they clearly show involvement of the petitioners in the aforesaid offences.

9. In view of above, there is no merit in the present petitions, and they are required to be dismissed. These two petitions are ordered to be dismissed. Rule discharged in each matter. Interim relief stands vacated in both the matters.

[D P Buch, J]
Date: 12.10.2000
msp.